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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/663,942	09/18/2000	Mireille Maubru	05725.0290-01	4634

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EXAMINER
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ELHILO, EISA B

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 02/13/2003

10

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/663,942

Applicant(s)

MAUBRU, MIREILLE

Examiner

Eisa B Elhilo

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1751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 November 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 13-27 is/are rejected.
- 7) ☒ Claim(s) 11 and 12 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

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### DETAILED ACTION

- 1 This action is responsive to the remarks filed on November 27, 2002.
- 2 The rejection of claims 1-9, 15-19 and 23-27 under 35 U.S.C. 103(a) as being unpatentable over Godo Kagaku or Misubishi Petrochemical Co' 114 (JP 1-213,221) in view of Yashihara et al. (US 5,102,655), is withdrawn because the reference of Godo et al. (JP' 1-213,221) is not used in the previous office action in paper No. 5, dated on 10, 03, 2001.

### NEW GROUND OF REJECTION

#### *Claim Rejections - 35 USC § 103*

- 4 The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-10, 13-27 are rejected under 35 U.S.C.103 (a) as being unpatentable over Kanji Narazaki et al. (JP 03220114) (English translation copy) in view of Yashihara et al. (US 5,102,655).

Kanji (JP' 114) teaches removable hair dye compositions that use a pigment as the coloring agent (see page 4, lines 17-20) and which fall within the scope of the claimed cross-linked polymers for example comprising a methacrylic acid unit, and a polymerizable monomer unit (for example methacrylates with alkyl ester of acrylic acid and or methacrylic acid) (see page 5, line 8 and page 8 lines 12-16). The composition may be packaged as an aerosol as claimed (see page 27, lines 4-5). The hair dye compositions also contain a colorant such as carbon black (see page 17, lines 8-17), water, organic solvents (see page 15, lines 14-19) and

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additive as claimed (see page 20, lines 1-8). Kanji also teaches a process for dyeing hair by using a pigment as the coloring agent which similar to the claimed process. The process has been employed in which the pigment dispersed in a resin solution is applied to the hair and dried, thereby sticking the pigment to the hair with the resin to dye the hair temporarily (see page 4, last paragraph).

The claims differ from the reference by reciting a hair dyeing composition comprising direct dye components. Further, the reference fails to teach the cross-linked polymers in the claimed amounts. However, the reference teaches a pigment such as carbon black as a coloring agent for dyeing hair (see page 4, lines 17-20).

Yoshihara (US' 655) in analogous art of hair dyeing compositions teaches a composition comprising hair dyeing base components such as acid dyes, pigments such as carbon black and other coloring agents such as acridine dye, azine dye, quinoline dye and anthraquinone dye (see col. 4, lines 38-48).

Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to modify the primary reference by substituting the carbon black pigment as a coloring agent with the acidic dyes, azo dyes or anthraquinone dyes as taught by Yoshihara to make such a dyeing composition. Such modification would be obvious because Yoshihara teaches the equivalence between the dyes such as acid dyes, azo dyes or anthraquinone dyes and the pigments such as carbon black and thus clearly suggests that these can be used in alternative. Also with regard to claims 10 and 13, it would have been obvious to one of ordinary skill in the art to incorporate the acidic azo dye of claim 10, and the acidic anthraquinone dyes of claim 13,

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to make such a dyeing composition because these dyes fall within the scope of the generic dyes of acidic azo dyes and acidic anthraquinone dyes that taught by Yoshihara.

Further, with respect to the claimed amounts of the dyeing ingredients in the composition, it would have been obvious to one having ordinary skill in the art at the time the invention was made to optimize the amounts of the ingredients in the composition in order to get the maximum effective amounts in the composition, absent unexpected results.

#### ***Allowable Subject Matter***

Claims 11 and 12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The closest prior art of record (US' 5,102,655) alone or in combination does not teach, disclose or suggest a hair dyeing composition comprising at least one cross-linked polymer containing acrylic residue units of the claimed formula and at least one species of cationic azo dyes of the formulae (II) to (VII) as claimed. Accordingly, the subject matter of claims 11 and 12 would not have been obvious to one of the ordinary skill in the art of hair dyeing formulation.

#### ***Response to Applicant's Arguments***

5 Applicant's arguments filed 11/27/2002 have been fully considered but they are rendered moot in view of new ground of rejection.

#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B Elhilo whose telephone number is (703) 305-0217. The examiner can normally be reached on M - F (7:30-5:00) with alternate Friday off.

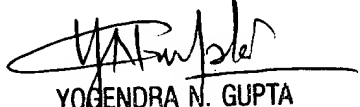
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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (703) 308-4708. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Elhilo

February 2, 2003

  
YOGENDRA N. GUPTA  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1700